IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5597 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

P B BARIYA

Appearance:

MR HARDIK C RAWAL for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/11/2000

ORAL JUDGEMENT

1. The Petitioner - Gujarat State Road Transport Corporation has filed this Special Civil Application under Article 227 of the Constitution of India, challenging the award passed by the Labour Court,

Vadodara in Reference No. 602 of 1983. The respondent-Workman was serving on the post of conductor in the S.T. Corporation. The said workman was subjected to departmental proceedings for various charges. At the time of checking of the bus by Mr. H.J. Bhatt, in which the workman was working as conductor, following irregularities were found :-

1. One passenger was found travelling from the station without ticket. Fare was not taken.

2. Intentionally, tickets were to be given too slowly to the passengers of the bus.

3. On checking S.T. Cash, Rs.34.50 p. were found more.

4. On checking the Regzine Bag, one card with photograph of one lady came to be found, which was not deposited as lost property and Rs.75/were came to be found from Regazine Bag which were not cause to be noted in the Bill.

5. On checking private amount, one sold ticket No. I 379656 of 40-45 ps. was came to be found upon which there was noting to the extent that Rs. 14-75p. were required to be paid back. It was appearing so that, that ticket may have kept with a view to take deposited amount.

6. On checking Trunk Box, found that the CWA original along with duplicate register, which should be remained in the depot only, were taken with him without the permission of anybody. "

2. On the basis of aforesaid report by Mr. H.J. Bhatt, ATS, departmental inquiry was initiated against the respondent workman. The competent authority who initiated the inquiry ultimately came to the conclusion that, looking to the irregularities of serious nature during the course of duty, the concerned employee was not required to be continued in service. Therefore, the workman was served with a second show cause regarding penalty along with the Inquiry Report. Ultimately the concerned workman was dismissed from service on the basis of charges which were proved against him. The respondent workman thereafter raised an industrial dispute, challenging the aforesaid decision of the S.T.

Corporation. The said dispute was referred to the Presiding Officer, Labour Court, Vadodara under section 10 (1) (c) of the Industrial Disputes Act and the same was registered as REference No. 602 of 1983. The Labour Court ultimately by its decision dated 16-5-1990 came to the conclusion that, in the facts & circumstances of the case such a drastic action of dismissal was not justified and while exercising power under section 11-A of the Act, the Labour Court interfered with the order of dismissal by setting aside the same. The concerned workman accordingly was reinstated in service on the original post and granted 25 % of the back wages to the said employee. The aforesaid award of the Labour Court is challenged by petitioner S.T. Corporation in the present Special Civil Application. Though served, the respondent has not appeared in the present proceedings. Therefore, I have to decide this petition only on the basis of the arguments advanced by learned counsel for the petitioner.

3. At the time of admitting this petition, this Court has stayed the order of payment of back wages only. With the result, so far as the order of reinstatement was concerned, same was not stayed by this Court. Mr. Rawal, learned counsel for the petitioner submitted that, so far the order of reinstatement is concerned, same has already been complied with by the S.T. Corporation.

4. At the time of hearing of this petition it was argued by Mr. Rawal for the petitioner that, looking to the serious misconducts and irregularities in which the workman was found to have been involved, the Labour Court should not have passed order of reinstatement with 25 % backwages. However, it is fairly submitted by Mr. Rawal that, since this Court had not stayed the order of reinstatement and since the concerned workman is in service as back as in 1991, he may not seriously press the point of reinstatement and he will confine his arguments only on the point of back wages to the extent of 25 % granted by the Labour Court. It is required to be noted that, the departmental inquiry was conducted and was concluded by giving proper opportunities to the concerned workman to prove his case. It is not in dispute that the conductor had not issued ticket to one passenger, for which the explanation given by the conductor was that the said passenger was a student and that, said passenger had told him that he was a pass holder. However, the Labour Court was more impressed by the fact that during departmental inquiry, Inquiry Officer had not examined passengers of the bus, who had not taken tickets and that if the said passengers were examined, then the workman could have cross examined

those passengers and could have tried to bring forth correct facts on record whether that particular passenger was a passholder or not. On the basis that the passengers were not examined, the Labour Court came to the conclusion that the employer has not produced solid evidence on record. Mr. Rawal has relied upon the judgment of the Apex Court reported in AIR 1977 S.C. 1512, in case of STATE OF HARYANA AND ANOTHER V. RATTAN SINGH. In the aforesaid case it was held by the Apex Court that, in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. The sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. In that case, a conductor of State Road Transport Corporation was charged for not collecting fare from certain passenger and on his guilt being established, there was simple termination of his service because of his long service and young age. In these circumstances the Apex Court held that, it cannot be said that merely because statement of passengers were not recorded by the Inspector of the Flying Squad, the order of the authority was vitiated. The evidence of Inspector has some credence and has the relevance to the charges levelled against the bus conductor, and that the order of simple termination was held to be valid.

5. Mr. Rawal, therefore submitted that, simply because the passengers were not examined is not a ground for invalidating the departmental inquiry which was otherwise held on the basis of principles of natural justice, and there was sufficient materials on record for coming to the conclusion that the conductor in question had not issued ticket atleast to one passenger. In view of the aforesaid judgment of the Supreme Court, there is no doubt that in such departmental inquiry it is not necessary for the State Transport authority to examine passengers when it is a case of non issuance of ticket, and simply because the passengers are not examined at the relevant time, would not ipso facto vitiate the departmental proceedings, if the same is held in accordance with law. The finding of the Labour Court

that, at the most it would be a case of negligence cannot be said to be a finding which could even validly recorded by the Labour Court. The fact remains that the ticket was not issued to a passenger at the time when inspection was carried out by the concerned officer of the S.T. Corporation. Even on second charge regarding excess cash of Rs.34-50 is concerned, the Labour Court eventhough believed the same, subsequently come to the conclusion that, at the most it can be said that the concerned person was negligent and that the penalty of dismissal would be therefore of excessive. The Labour Court, with respect, has conjected on various points while examining the case on merits. The Labour Court ultimately by exercising power under section 11-A of the Industrial Disputes Act has ordered for reinstatement of the respondent workman in service with 25 % backwages. Mr. Rawal, learned counsel for the petitioner also placed on record a Chart which contains various past instances in which the concerned workman was involved. Mr. Rawal submitted that the aforesaid chart was also placed before the Labour Court, as it relates to the cases prior to the present incident, wherein it is found that even in the past the concerned workman was found not to be issuing tickets to certain passengers. The said chart is kept on record. It is required to be noted that, when domestic enquiry is held against concerned workman in accordance with law, and when sufficient opportunity was given to the concerned workman, and when competent authority ultimately came to the conclusion that the respondent workman had not issued ticket to one passenger deliberately and in order to get monetary advantage; it was not proper for the Labour Court to merely on conjectures and surmises to take a different view of the matter. As stated earlier, it was not necessary for the Corporation to examine passengers of the bus when there is a case of non issuance of ticket. The Labour Court, therefore, has clearly committed an error of law in setting aside the order of disciplinary authority. However, it is no doubt true that it is within the realm of the Labour Court to exercise power under section 11-A of the Act. However, power under section 11-A of the Act requires to be exercised carefully and while exercising this power the Labour Court has to see whether the punishment imposed by the disciplinary authority is disproportionate. While deciding the said point the Labour Court has to consider the nature of the work that the concerned employee was performing while on duty.

6. The conductor of a bus is entrusted with the work of distributing tickets and collection of fare from the passengers and to give correct account to its employer .

While discharging his duty he must act with honesty and integrity. However in the instant case, since the order of reinstatement was not stayed by this Court, and the concerned workman was already taken in service by the S.T. Corporation, it is not necessary for me to go in detail whether the Labour Court was justified in invoking power under section 11-A of the Act. However, looking to the facts of the case, this is not a case wherein any amount of backwages should be granted to the workman. It cannot be said that, there was any procedural flaw in the departmental inquiry or the departmental inquiry is vitiated in any way. Since the S.T. Corporation has already taken the respondent workman back in service as back as in 1991, it is not necessary for me to interfere with the order of reinstatement. However, there is absolutely no reason to grant any backwages to the workman and the order of the Labour Court granting 25 % backwages to the workman is therefore required to be set aside.

7. Under these circumstances, the order of the Labour Court in so far as granting of 25 % backwages to the respondent workman is concerned, same is required to be set aside. This petition is accordingly partly allowed. So far as the order of reinstatement is concerned, same is confirmed. However, so far as awarding 25 % backwages to the respondent workman is concerned, same is quashed and set aside. The effect of the same is, the respondent workman is held to be reinstated in service as per the award of the Labour Court, without any backwages. This petition is accordingly partly allowed. Rule is made absolute to the aforesaid extent, but with no order as to costs.

Dt: 6-11-2000

(P.B. Majmudar, J)

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